

June 28, 2011

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

We thank you for your extraordinary efforts to enact legislation that would facilitate U.S. compliance with its consular notification and access obligations and to express the Administration's strong support for S. 1194, the Consular Notification Compliance Act of 2011 (CNCA).

The millions of U.S. citizens who live and travel overseas, including many of the men and women of our Armed Forces, are accorded critical protections by international treaties that ensure that detained foreign nationals have access to their country's consulate. Consular assistance is one of the most important services that the United States provides its citizens abroad. Through our consulates, the United States searches for citizens overseas who are missing, visits citizens in detention overseas to ensure they receive fair and humane treatment, works to secure the release of those unjustly detained, and provides countless other consular services. Such assistance has proven vital time and again, as recent experiences in Egypt, Libya, Syria and elsewhere have shown. For U.S. citizens arrested abroad, the assistance of their consulate is often essential for them to gain knowledge about the foreign country's legal system and how to access a lawyer, to report concerns about treatment in detention, to send messages to their family, or to obtain needed food or medicine. Prompt access to U.S. consular officers prevents U.S. citizen prisoners from being lost in a foreign legal system.

The United States is best positioned to demand that foreign governments respect consular rights with respect to U.S. citizens abroad when we comply with these same obligations for foreign nationals in the United States. By sending a strong message about how seriously the United States takes its own consular notification and access obligations, the CNCA will prove enormously helpful to the U.S. Government in ensuring that U.S. citizens detained overseas can receive critical consular assistance.

The CNCA will help us ensure that the United States complies fully with our obligations to provide foreign nationals detained in the United States with the opportunity to have their consulate notified and to receive consular assistance. By setting forth the minimal, practical steps that federal, state, and local authorities must take to comply with the Vienna Convention on Consular Relations (VCCR) and similar bilateral international agreements, the CNCA will ensure early consular notification and access for foreign national defendants, avoiding future

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violations and potential claims of prejudice for those who are prosecuted and ultimately convicted. In this regard, the legislation is an invaluable complement to the extensive training efforts each of our Departments conducts in this area.

The CNCA appropriately balances the interests in preserving the efficiency of criminal proceedings, protecting the integrity of criminal convictions, and providing remedies for violation of consular notification rights. By allowing defendants facing capital charges to raise timely claims that authorities have failed to provide consular notification and access, and to ensure that notification and access is afforded at that time, the CNCA further minimizes the risk that a violation could later call into question the conviction or sentence. The CNCA provides a limited post-conviction remedy for defendants who were convicted and sentenced to death before the law becomes effective. To obtain relief, such defendants face a high bar: They must establish not only a violation of their consular notification rights but also that the violation resulted in actual prejudice. Going forward, the CNCA permits defendants who claim a violation of their VCCR rights an opportunity for meaningful access to their consulate but does not otherwise create any judicially enforceable rights.

After more than seven years and the efforts of two administrations, the CNCA will also finally satisfy U.S. obligations under the judgment of the International Court of Justice (ICJ) in *Case Concerning Avena and Other Mexican Nationals (Mex. v. U.S.)*, 2004 I.C.J. 12 (Mar. 31). As we expressed in April 2010 letters to the Senate Judiciary Committee, this Administration believes that legislation is an optimal way to give domestic legal effect to the *Avena* judgment and to comply with the U.S. Supreme Court's decision in *Medellin v. Texas*, 552 U.S. 491 (2008). The CNCA will remove a long-standing obstacle in our relationship with Mexico and other important allies, and send a strong message to the international community about the U.S. commitment to honoring our international legal obligations.

The CNCA unmistakably benefits U.S. foreign policy interests. Many of our important allies and regional institutions with which we work closely—including Mexico, the United Kingdom, the European Union, Brazil and numerous other Latin American countries, and the Council of Europe, among others—have repeatedly and forcefully called upon the United States to fulfill obligations arising from *Avena* and prior ICJ cases finding notification and access violations. We understand that the Governments of Mexico and the United Kingdom have already written to Congress to express their strong support for this legislation.

This legislation is particularly important to our bilateral relationship with Mexico. Our law enforcement partnership with Mexico has reached unprecedented levels of cooperation in recent years. Continued noncompliance with *Avena* has become a significant irritant that jeopardizes other bilateral initiatives. Mexico considers the resolution of the *Avena* problem a priority for our bilateral agenda. The CNCA will help ensure that the excellent U.S.-Mexico cooperation in extradition and other judicial proceedings, the fight against drug trafficking and organized crime, and in a host of other areas continues apace.

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In sum, the CNCA is a carefully crafted, measured, and essential legislative solution to these critical concerns. We thank you again for your work towards finding an appropriate legislative solution to this matter of fundamental importance to our ability to protect Americans overseas and preserve some of our most vital international relationships.

Sincerely,



Eric H. Holder, Jr.
Attorney General



Hillary Rodham Clinton
Secretary of State